

REMARKS

Applicant hereby submits a request for a continued prosecution application, under 37 C.F.R. § 1.53(d), of the above-referenced prior-filed non-provisional application and this Preliminary Amendment A.

Claims 1-113 are currently pending in the application. Claims 41-51 are allowed. Claims 1-40, 53-76, 79-96 and 99-113 are rejected. Claims 52, 77, 78, 97 and 98 are objected to. Claims 1-6, 23-32, 37-44, 51-58, 60, 61, 66-71, 73, 74, 76, 77, 78, 80, 81, 82, 85-88, 91, 92, 94, 95, 97 and 107-110 are hereby amended. Claims 67, 69 and 88 are hereby canceled without prejudice. Claims 114, 115 and 116 are hereby added.

Examiner states, "Claims 1-40, and 53-76, 79-96, and 99-113 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lemelson et al. (5,823,788) in view of Ishii (5,400,687)." (Final Office Action—Date Mailed: October 21, 2003, Paper No. 22, page 2, lines 8-9)

Examiner states, "Lemelson et al. disclose most of the components of the claimed invention." (paper no. 22, page 3, line 15)

Applicant has filed concurrently herewith a Declaration under 37 CFR 1.131 and has sworn back of the Lemelson et al. (5,823,788) reference. (As a result of involvement in recent litigation, Applicant discovered an archived early draft of the specification and claims and swears back until at least the date of the said draft: October 20, 1995. The discovery of this archived early draft of the specification and claims was made after Applicant's response to the last Office Action—paper no. 20—for this present patent application. Applicant can show continuous efforts in the reduction of practice for the present invention from at least October 20, 1995 through the present application's priority date: July 10, 1996.) Therefore, the combination of Lemelson et al. with any other reference is an improper combination. The final rejection of Claims 1-40, 53-76, 79-96 and 99-113 under 35 U.S.C. 103(a) based upon Lemelson et al. (US 5,823,788) is hereby traversed and overcome in accordance with 37 CFR 1.131.

In the aforementioned early draft of the specification, Applicant herein provides the following examples showing antecedent basis in the above-referenced early draft of the invention claimed in Applicant's present application:

Present Application	Early Draft of Specification and Claims
"...a plurality of individual workstations..." (Claim 1, line 3)	Page 3, lines 1-14; Page 4, lines 23-26; Page 5, lines 6-15; Page 6, lines 1-3; Claim 2; Claim 18; Claim 20
"...a communication interface providing for communications with the respective	Page 3, lines 1-14; Page 4, lines 23-26; Page 5, lines 6-15; Page 6, lines 1-3; Claim 2; Claim 3,

workstation of music data....” (Claim 1, lines 4-5)	Claim 18; Claim 20
“...representative of at least one visual image...” (Claim 1, line 5)	Page 3, lines 12-13
“...memory for locally storing...” (Claim 1, line 7)	Page 3, lines 8-9; Page 4, lines 13-18
“...a visual image of the respective selected musical composition....” (Claim 1, line 11)	Page 3, lines 12-13; Page 4, lines 13-18
“...an input device responsive to a performance by the user of the displayed musical composition for providing an output of user performance data. (Claim 2, lines 2-3)	Claims 6, 7 and 19
“...an editing subsystem....” (Claim 6, lines 2-4)	Page 3, lines 23-26; Page 4, lines 19-24; Page 5, lines 19-26
“...the modified music data is communicated to at least one of....” (Claim 6, lines 5-8)	Page 3, lines 22-26; Page 4, lines 23-26; Page 5, lines 1-11
“...representative of a visual image of the selected musical composition as changed by the editing subsystem,...” (Claim 6, lines 6-7)	Page 5, lines 6-11
“...workstations are each associated into defined subsets....” (Claim 12)	Page 4, lines 24-26; Page 5, lines 1-5
“...is a master that communicates its respective modified data to all of the plurality of individual workstations.” (Claim 13)	“Conductor”—Page 4, lines 19-24
“...a user input.” (Claim 16)	Claim 18; Page 4, lines 13-24
Claim 18	Page 6, lines 7-16
Claim 19	Page 4, lines 19-24
Claim 21	Page 4, lines 19-24
Claim 23	Page 4, lines 19-24
Claim 25	Page 4, lines 19-24
Claim 31	Page 4, lines 24-26; Page 5, lines 1-11
Claim 33	Page 4, lines 24-26; Page 5, lines 1-11; Page 6, lines 13-16
Claim 34	Page 4, lines 24-26; Page 5, lines 1-11; Page 6, lines 13-16
“...means for retrieving the music data responsive to a user selection of the selected composition from a listing of available music compositions;...” (Claim 37, lines 2-3)	Page 3, lines 1-13; Page 4, lines 13-18
“...means for processing the music data to format the music data for presentation;...” (Claim 37, lines 4-5)	Page 3, lines 8-13; Page 5, lines 23-26
“...means for displaying a video presentation of the music data responsive to processing.” (Claim 37, lines 6-7)	Page 6, lines 1-3; Claims 2 and 20
Claim 38	Claims 2 and 20
“...a plurality of individual workstations, each	Claims 1, 6, 7 and 19

providing a local visual display....” (Claim 41)	
“...music input for selectively providing respective individual performance data output, responsive to a performance by a user of that respective individual workstation;...” (Claim 41, lines 4-6)	Claims 6, 7 and 19
Claim 56	Page 4, lines 24-26; Page 5, lines 1-11; Page 6, lines 1-3 and 13-16
Claim 57	Page 4, lines 24-26; Page 5, lines 1-11; Page 6, lines 1-3 and 13-16
Claim 58	Page 4, lines 24-26; Page 5, lines 1-11; Page 6, lines 1-3 and 13-16

Ishii (US 5,400,687), alone or in combination with any other art of record, does not teach, suggest or infer Applicant’s present invention. Additionally, it is respectfully submitted that Examiner’s reliance upon the combination of Lemelson and Ishii was improper, because Lemelson is not prior art to the pending application, and in any event, Lemelson did not teach, suggest or infer combination with Ishii.

To clarify the records, Applicant also revisits Examiner’s Response to [Applicant’s prior Arguments, whereas Examiner states, “1. Applicant’s arguments filed 01/24/200[4] have been fully considered but they are not persuasive.”

First, Examiner repeatedly states that Lemelson et al. teaches of a music display system. However, none of Examiner’s citations are in any way supportive of Examiner’s statements. For example, when Examiner cites Lemelson col. 3, lines 29-35, the reference does not even mention, suggest or infer the video/visual display of a music composition. (For comparison, see e.g., Applicant’s pending Claims 1-51, 55-65, 71-75, 77, 78 and 94-116.) Lemelson absolutely does not disclose visual display of a music composition—it is not disclosed, inferred or suggested. Likewise, Lemelson absolutely does not disclose performance of a user responsive to viewing of the visual display of a music composition—it is not disclosed, inferred or suggested. It is respectfully requested that that Examiner withdraw any rejection based upon Lemelson or alternatively provide a citation in Lemelson with technical basis. However, it is submitted that the technical merits of Lemelson cannot serve as a basis of rejection or objection. Otherwise, Examiner’s bases of rejection are purely based upon hindsight and gained from Applicant’s present application—by which, Examiner rejects Applicant’s own claims.

Neither Lemelson nor any other art of record teaches, suggests or infers any of the following claim elements alone or in the respectively claimed combinations:

“A display presentation system comprising: a plurality of individual workstations, each providing a local visual display presentation of at least a portion of a music composition, each of the individual workstations comprising a music input for selectively providing respective individual performance data output, responsive to a performance by a user of that respective individual workstation; combining means, responsive to the individual performance data output from each of the plurality of individual workstations, to provide a combined output of composite virtual performance data; wherein the combining means is further comprised of means for synchronizing and combining the individual performance data from the plurality of individual workstations to generate the composite virtual performance data; means for communicating said composite virtual performance data to at least one of the plurality of individual workstations; and means for providing a local presentation representative of at least one of an audio, a video and an audiovisual display of the individual performance data in combination for all of the communicating plurality of individual workstations responsive to the composite virtual performance data.”—as in Applicant’s pending Claim 41 and claims dependent therefrom.

“A method of electronically displaying a composition selection on at least one of a plurality of display subsystems, the method comprising: storing data representative of a visual display presentation for the composition selection; communicating the data to the display subsystem; processing the data in the display subsystem for display; displaying a video presentation of the composition selection on the display subsystem, responsive to the processing of the data; communicating the music data to a plurality of the display subsystems; displaying a video presentation on all of the plurality of the display subsystems of the music composition selection responsive to the music data; associating a type with each of the plurality of the display subsystems, wherein there are multiple different versions of the modified data; and selectively providing a video display for each of the plurality of display subsystems, responsive to the associated type for the respective one of the display subsystems.”—as in Applicant’s pending Claim 66 (currently amended to include elements of Claims 67-70, 79-81 and 85) and claims dependent therefrom.

“A method of providing a video display presentation of a selected composition

and of a user's performance, said method comprising: storing composition data representative of the selected composition; generating a video display output responsive to the composition data for the selected composition; displaying the video display presentation responsive to the video display output; storing user performance data associated with the corresponding display presentation responsive to the performance by the user responsive to the video display presentation; comparing the user performance data to the composition data for the corresponding display presentation; and modifying the display presentation to provide a visual presentation of the result of the comparing the user performance data and the composition data.”—as in Applicant's pending Claim 86 (currently amended to include the body of Claim 88) and claims dependent therefrom.

“A performance system for use by a plurality of users in providing a performance of a display presentation of a selected composition, said system comprising: a plurality of individual workstations, each individual workstation comprising: a communication interface providing for communications of composition data corresponding to the selected composition and representative of a visual image of the selected composition; a computing subsystem providing processing and memory for locally storing the composition data responsive to the communication interface; a display apparatus for providing a video display presentation of the selected composition responsive to the computing subsystem and the composition data; association means for associating a type to the individual workstation, wherein the individual workstation is further comprised of discrimination means for discriminating between the multiple separate visual image presentations to select a specific one representative of the corresponding respective one of the types, responsive to the association means and the discrimination means; and control means for broadcasting display data for multiple separate visual image display presentations corresponding to multiple separate respective multiple types.”—as in Applicant's pending Claim 87 (currently amended to include elements of Claims 88-90) and claims depending therefrom.

In fact, Lemelson fails to teach, suggest or infer **even the first part of the preamble of Applicant's Claim 87**: “A performance system for use by a plurality of users in providing a performance of a display presentation of a selected composition....”

“A display system comprising: a display for providing a video presentation for a respective artistic performance; an individual subsystem comprising **a performer input**

for selectively providing an output of performance data, responsive to a performance by a user of that respective individual subsystem responsive to the respective video presentation for the respective artistic performance, memory for storing the performance data, a transmitter for **outputting communicated output data synchronized to the respective display presentation,** and a data receiver for coupling communicated data for storage of the communicated data in memory of the respective individual subsystem; a display for providing a display presentation to the user responsive to at least one of the communicated data stored in memory and the performance data output from the individual subsystem; wherein there is a plurality of individual subsystems, the system further comprising: **means to provide a combined output of composite virtual performance data responsive to the performance data output from at least two** from the plurality of the individual subsystems; and wherein the display presentation is one of audio, visual, and audiovisual.”—as in Applicant’s pending Claims 91-93. **[emphasis added]**

Again, Applicant also reiterates that there is no suggestion in Lemelson or Ishii to combine each other’s teachings.

Claims 52, 77, 78, 97, and 98 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. However, in light of the above remarks, it is respectfully submitted that all objections as to Claims 52, 77, 78, 97, and 98, as being dependent upon a rejected base claim, are traversed and overcome.

Applicant’s current amendments to claims have been made for clarification purposes to promote a better understanding of the claims’ language and meanings for Examiner. These amendments have not been made in response to any art of record.

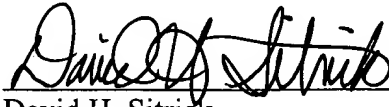
This response is accompanied by the appropriate fee transmittal authorizing the Commissioner to charge any additional fees and credit any overpayments during the pendency of this application to Sitrick & Sitrick’s Deposit Account Number: 501166. A basic filing fee is due and paid via the aforementioned fee transmittal. No new matter has been added. Reconsideration is respectfully requested.

Applicant respectfully submits that all bases of Examiner’s objections and rejections have been successfully traversed and overcome, and that all pending Claims 1-66, 68, 70-87 and 89-

116 are in proper form for allowance. Reconsideration is requested taking the form of a withdrawal of the Final Rejection and issuance of a Notice of Allowance.

The Examiner is invited to directly communicate with the undersigned, if it will in any way facilitate the prosecution of the application.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David H. Sitrick", written over a horizontal line.

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April 21, 2004

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